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Pay & Allowances 5

OGC HAS REVIEWED.

4 October 1954

Memorandum for: Assistant Director for Personnel

Subject : Employment of Retired Personnel as Consultants

1. Reference is made to your memorandum of September 29, 1954, same subject as above, wherein you request that this office consider the application of certain rulings of the Comptroller General in relation to consultant contracts entered into between the Agency and retired personnel of all categories (military, foreign service, and regular civil service annuitants).

2. The Comptroller General has frequently ruled that employment of a retired officer on a fee basis, completely unrelated to any measure of time, as a consultant in an advisory capacity, does not constitute a holding of a "civilian office or position within the contemplation of the dual compensation or office statutes." The criteria, as indicated in my memorandum of 23 September 1954 to the Chief, Fiscal Division, copy of which has been forwarded to you, are based upon the proposition that where the nature of the duties required is purely advisory, generally performed at infrequent intervals, and the compensation payable therefor is upon a fee basis as distinguished from a purely time basis, the holding of an office or position is not involved. This general principle would apply to any or all of the three classes of retired personnel with which this Agency deals.

3. At this juncture, however, a caveat is in order. No one of the enumerated criteria is considered determinative of the issue and the absence of any one of them may be sufficient to take a case out of the rule (28 Comp. Gen. 381, December 29, 1948). The utilization of a person may be such that what was originally intended as a fee use, i. e., no admeasurement of time, may evolve into a time use. If a conversion of this sort occurs, then a dual office or compensation problem exists. As you are undoubtedly aware, the category of contract consultants throughout the Government has been

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a matter of continuing interest to the Comptroller General. It is natural, therefore, that the mere fact of employment of annuitants with other establishments of the Government is sufficient to cause those officials in charge of the Annuity Desks to suspend the annuities of the individuals concerned for the reflected period of employment. The recent exchange of correspondence with the Department of State over [REDACTED] is illustrative of the point.

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4. If this office can be of any further assistance, please advise us.

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[REDACTED]

Assistant General Counsel

OGC:JBK:cst

cc: Legal, Vital
Subject, Signer
Chrono

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